

# SOUTH AUSTRALIAN GOVERNMENT NOVATION DEED

(Version 2)

THIS DEED is made on

20

## BETWEEN

[Employer Name] of [Employer Address] ("Employer")  
[Employer Address]

## AND

[Employee Name] of [Employee Address] ("Lessee")  
[Employee Address]

## AND

[Financier] of [Financier Address] ("Owner")

## WHEREAS

- A. The Lessee and the Owner have entered into the Lease pursuant to which the Lessee leases from the Owner the Motor Vehicle.
- B. The Employer has agreed to assume responsibility for the obligations of the Employee under the Lease in consideration for receiving the benefit of the rights of the Employee arising under the Lease.

## NOW IT IS AGREED as follows

### 1. DEFINITIONS

In this Deed capitalised terms which are not defined in this Deed have the meanings given to those terms in the Lease and the following terms have the following meanings, in either case unless the subject or the context otherwise requires:

Deed	this deed including the recitals;
Lease	the lease dated [ ] between the Owner and the Lessee in which the terms and conditions on which the Motor Vehicle is provided to the Lessee are set out;
Motor Vehicle	the motor vehicle specified in the Lease;
Rights and Obligations	all the rights and obligations on the Lessee's part arising under the Lease as at the date of this Deed;
RV Obligation	the obligation (if any) to make a payment upon expiration of the Lease which is solely referable to the residual value of the Motor Vehicle; and
Time of Cessation	the earlier of: <ol style="list-style-type: none"><li>(a) the time when the Owner actually receives written notice from the Employer that the Lessee has ceased to be employed or engaged by the Employer for any reason whatsoever; or</li><li>(b) the time when the Owner actually receives written notice from the Employer that the salary sacrifice agreement entered into by the Employer and the Lessee has expired or is terminated; or</li><li>(c) the time when the Employer, at its sole discretion, notifies the Owner that the deed is terminated.</li></ol>

### 2. NOVATION AND RE-NOVATION

- (a) With the consent of the Owner, subject to this Deed, on the date of this Deed the Lessee hereby novates to the Employer, and the Employer accepts the novation from the Lessee of, the Rights and Obligations.
- (b) With the consent of the Owner, subject to this Deed, at the Time of Cessation the Employer hereby novates to the Lessee, and the Lessee accepts the novation from the Employer of, the Rights and Obligations to the extent to which they subsist at that time.
- (c) At the time of the novation referred to in (a), the RV Obligation (if any) will be omitted from the Lease and, in consideration of the Owner entering into this Deed, as a separate and independent obligation, the Lessee agrees with the Owner that the Lessee will make a payment to the Owner at the time, in the manner and in an amount equal to the amount it would have had to pay if the RV Obligation had not been omitted from the Lease.

### 3 ACKNOWLEDGMENTS

The parties each acknowledge that:

- (a) the Employer will make the Motor Vehicle available for the use of the Lessee and the Lessee's associates (as defined in the Fringe Benefits Assessment Act 1986);
- (b) the place where the Motor Vehicle is to be kept pursuant to the terms of the Lease will remain the place where the Motor Vehicle is to be kept;
- (c) the novation under clause 2(a) comprises part of the remuneration arrangements existing between the Lessee and the Employer;
- (d) each covenant in the Lease not to do or perform some act or thing is deemed to include a covenant not to cause, permit or suffer any such act or thing to be performed or done by any person having the use of the Motor Vehicle from time to time; and
- (e) Nothing in this Deed constitutes or may be construed as creating or requiring a lease or sub-lease of the Motor Vehicle between the Lessee and the Employer.

### 4. INDEMNITY

The Lessee, to the extent lawfully permitted for the time being, indemnifies the Owner and its officers and agents against any losses, liabilities, claims, charges, costs, expenses (including without limitation reasonable legal costs, charges and expenses), actions and demands suffered or incurred by or made against the Owner or its respective officers or agents arising out of or in connection with:

- (a) the failure of the Employer to properly perform its obligations pursuant to this Deed or the Lease or any negligent performance of those obligations; and
- (b) any act or omission of the Lessee which renders ineffective or otherwise negates the performance by the Employer of its obligations under this Deed or the Lease.

### 5. NOTICES

All notices, requests, certificates, demands, consents, approvals, agreements or other communications to or by a party to this Deed (unless otherwise provided in this Deed):

- (a) must be in writing and addressed as follows:
  - (i) If to the Owner, to:  
Telephone: [                      ]  
Facsimile: [                      ]
  - (ii) If to the Employer, to:  
Telephone: [                      ]  
Facsimile: [                      ]
  - (iii) If to the Lessee, to the address specified for the Lessee in the Lease,  
or to such other address as may be notified to the other parties from time to time or, if an address set out above or otherwise notified is no longer appropriate, to the usual place of business or registered office of the recipient last known as such to the sender;
- (b) must be signed by an authorised officer of the sender or the Lessee, as the case may be; and
- (c) will be deemed to be duly given or made in accordance with the provisions of the Lease.

### 6. MISCELLANEOUS

#### 6.1 Survival of indemnities

Each indemnity in this Deed:

- (a) is a continuing obligation;
- (b) constitutes a separate and independent obligation of the party giving it from its other obligations under this Deed and applies notwithstanding any indulgence granted to that party from time to time; and
- (c) survives the termination of this Deed.

#### 6.2 Severability of Provisions

If any part of this Deed is prohibited, void, voidable, illegal or unenforceable under the laws of any relevant jurisdiction then that part is severed from this Deed for the purposes of that jurisdiction only but without affecting the continued operation of the rest of this Deed in that jurisdiction or the operation of that part of this Deed in any other jurisdiction.

#### 6.3 Assignment

No party may assign, create any interest in or otherwise deal with all or any of its rights or obligations under this Deed without the consent of the others.

6.4 Governing Law and Jurisdiction

This Deed is governed by and construed in accordance with the same laws which govern the Lease and, in relation to any suit, action or proceeding in respect of this Deed, each of the parties irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of that place and courts of appeal from them.

Each party waives any right it has to object to an action being brought in those courts including, without limitation, by claiming that the action has been brought in an inconvenient forum or that those courts have no jurisdiction.

6.5 Counterparts

This Deed may be executed in any number of counterparts. All of those counterparts taken together are deemed to constitute one and the same instrument.

6.6 Attorneys

Each attorney executing this Deed states that he has no notice of the revocation of his power of attorney.

**EXECUTED** as an Deed and delivered on the date shown on the first page.

**SIGNED, SEALED AND DELIVERED**

for and on behalf of the Employer in the presence of:

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Signature of Witness

\_\_\_\_\_

Name of Witness

\_\_\_\_\_

**SIGNED , SEALED AND DELIVERED**

by the Lessee in the presence of:

\_\_\_\_\_

Signature of Witness

\_\_\_\_\_

Name of Witness

\_\_\_\_\_

**SIGNED, SEALED AND DELIVERED**

for and on behalf of the Owner in the presence of:

\_\_\_\_\_

Signature of Witness

\_\_\_\_\_

Name of Witness

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